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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,627	12/31/2003	Stephen Baratian	17414	8303

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KIMBERLY-CLARK WORLDWIDE, INC.  
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EXAMINER

EVANS, CHIVONNE LAURIE

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/749,627

Applicant(s)

BARATIAN ET AL.

Examiner

Chivonne L. Evans

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-7, 10-17, 19 and 20 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a fluid intake of at least about 1.3 cc/s and at least about 2.5 cc/s, does not reasonably provide enablement for a fluid intake of greater than 1.3, 1.4, or 1.8 cc/s as stated in claims 1, 19, and 20, respectively. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims. "Greater" than 1.3 encompasses a range from 1.3 cc/s to infinity, therefore one skilled in the art would not be able to practice the claimed invention without undue experimentation. With regards to the term "at least about" and "less than about" in claims 2-6, 12-17, and 21-22; the specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims. Referring to claims 2-6, the applicant failed to disclose an upper limit which cannot be determined without undue experimentation. Also, the applicant requires a flowback and a TEWL of less than values disclosed in claims 12-14 and 20-22, however, with no lower limit, applicant is implying that zero is an acceptable value therefore rendering no flowback nor TEWL which invalidate the said

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claims. In claims 15-17, less than the percentages claimed by the applicant would again render 0% or no contact as an acceptable value. By using the term "greater than about" in claims 7 and 10-11, the specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims. The applicant is claiming air permeability and dimensions with an indefinite maximum of infinity that inhibits the examiner from determining an upper limit without undue experimentation.

***Claim Rejections - 35 USC § 102/103***

2. A.) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

B.) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1-6, 8 and 12-22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Arteman et al. (5925026).

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4. A.) Arteman teaches a diaper with a liquid permeable porous or apertured topsheet and surge layer, an absorbent core and a breathable backsheet; all made of materials and surface structure arrangements (Columns 8, 9, and 10) that all are consistent with the limitations of the claims and has intake values that fell between and/or exceeded (Tables 1 and 2) those specified by the applicant. It is the base presumption that the properties governing the claimed absorbent article if not taught, may be very well met by the absorbent article of Arteman, since the article of Arteman is essentially the same and made in essentially the same manner as applicants' article, and thus the properties not mentioned by Arteman are inherent. The burden to show that this, in fact, is not the case is shifted to applicants as per In re Fitzgerald (205 USPQ 594). (CAFC)

5. B.) In the alternative the claims are also obvious over Arteman et al. (5925026). Although Arteman lacks specified values via testing means disclosed by the applicant, Arteman teaches an absorbent article with a liquid permeable bodyside liner made from nonwoven spunbonded polypropylene or a variety of other materials (Column 8, lines 38-65) with uniform pores and an apertured absorbent pad (Column 3, lines 22-34) with surge layer (Column 9, Lines 33-45) whereas the absorbent pad made of superabsorbent materials and the surge layer made of fibrous nonwoven web material, and an outer cover made from vapor permeable, liquid impermeable micro-porous material (Column 9, Lines 9-32); to achieve optimal fluid intake, flowback, permeability and absorbency levels. Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to that the combination of these materials taught

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by Arteman, if tested by applicant, would produce consistent values to those claimed by the applicant, to provide a diaper that has effective fecal fluid transfer, therefore creating healthy for the skin of the user.

***Claim Rejections - 35 USC § 103***

6. Claim 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arteman et al. (5925026) as applied to claim 1 above, and further in view of Mattingly et al. (4690679). Arteman teaches an absorbent article substantially as claimed except for the specified body side liner with a plurality of having a dimension greater than 0.25 millimeters, as well as having greater than 30% and 0.5 square millimeters of open area. Mattingly teaches a topsheet or bodyside liner with apertures (or pores) that have a diameter between 0.010-0.030 inches (0.254-0.762 mm) and an open area of 42% which would leave more than 0.5 square millimeters of open area, to encourage fluid transfer within the absorbent article (Column 3, line 51- Column 4, line 5). Therefore it would have been obvious to one having ordinary skill in the art to modify Artemans' absorbent with the apertured topsheet taught by Mattingly to increase the liquid transfer properties providing a less irritable and non-leaking diaper.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wechel et al. (6022818), Damay et al. (2001/0044614)

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Gross et al (2003/0208175), Dodge et al. (6696618), Ruman et al (6727404) and Stokes et al (5931823) all teach art that is relevant to this application with regards to the fluid and vapor transfer properties of an absorbent article.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chivonne L. Evans whose telephone number is 571-272-8686. The examiner can normally be reached on between 6:30-3:30, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**TATYANA ZALUKAEVA**  
**PRIMARY EXAMINER**



Chivonne L Evans  
Examiner  
Art Unit 3761